

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
October 14, 2005

CHAPTER TWENTY-ONE
EXCEPTIONS

ARTICLE 21.1: GENERAL EXCEPTIONS

1. For purposes of Chapters Two through Seven (National Treatment and Market Access for Goods, Textiles and Apparel, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
2. For purposes of Chapters Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce)¹, Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

ARTICLE 21.2: ESSENTIAL SECURITY

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.

ARTICLE 21.3: TAXATION

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

¹ This Article is without prejudice to whether digital products should be classified as goods or services.

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2. (a) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
- (b) In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
3. Notwithstanding paragraph 2:
 - (a) Article 2.2 (National Treatment and Market Access for Goods – National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does GATT 1994 Article III; and
 - (b) Article 2.10 (National Treatment and Market Access for Goods – Export Taxes) shall apply to taxation measures.
4. Subject to paragraph 2:
 - (a) Article 11.2 (Cross-Border Trade in Services – National Treatment), Article 12.2 (Financial Services – National Treatment), and Article 12.5 (Financial Services – Cross-Border Trade) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and
 - (b) Articles 10.3 (Investment – National Treatment) and 10.4 (Investment – Most-Favored-Nation Treatment), Articles 11.2 (Cross-Border Trade in Services – National Treatment) and 11.3 (Cross – Border Trade in Services – Most-Favored-Nation Treatment), and Articles 12.2 (Financial Services – National Treatment) and 12.3 (Financial Services – Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers;

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except that nothing in those Articles shall apply:

- (c) any most-favored-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention;
- (d) to a non-conforming provision of any existing taxation measure;
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
- (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by GATS Article XIV(d), without regard to the limitation in such Article to direct taxes); or
- (h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, fund, or other arrangement to provide pension or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 2, 3, and 4 of Article 10.8 (Investment – Performance Requirements) shall apply to taxation measures.

- 6. (a) Article 10.15 (Investment – Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or an investment authorization.
- (b) Article 10.6 (Investment – Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 10.6 (Investment – Expropriation and Compensation) as the basis for a claim where it has been determined pursuant to this subparagraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.6 (Investment – Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 10.15.4 (Investment –

Draft
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Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 10.15 (Investment – Submission of a Claim to Arbitration).

- (c) For purposes of this paragraph, **competent authorities** means:
 - (i) in the case of Oman, the Minister of National Economy; and
 - (ii) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy).

7. For purposes of this Article, **taxes** and **taxation measures** do not include:
- (a) a customs duty; or
 - (b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

ARTICLE 21.4: DISCLOSURE OF INFORMATION

Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.